

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

|                        |   |                                    |
|------------------------|---|------------------------------------|
| LAMAR LENOIR,          | : | Case No. 3:09-cv-286               |
| Petitioner,            | : |                                    |
| vs.                    | : | District Judge Walter H. Rice      |
|                        |   | Magistrate Judge Michael J. Newman |
| WARDEN, SOUTHERN OHIO  | : |                                    |
| CORRECTIONAL FACILITY, | : |                                    |
| Respondent.            | : |                                    |

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**REPORT AND RECOMMENDATION THAT PETITIONER'S MOTION FOR LEAVE  
TO PROCEED *IN FORMA PAUPERIS* ON APPEAL (DOC. 95) BE DENIED**

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For the reasons stated in the undersigned's November 2, 2012 Report and Recommendation (doc. 91), an appeal of the denial of Petitioner's Fed. R. Civ. P. 60(b) motion (doc. 88) would not be taken in good faith -- a prerequisite for proceeding *in forma pauperis* on appeal. See 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3)(A). Accordingly, the Court **RECOMMENDS** that Petitioner's motion for leave to proceed *in forma pauperis* (doc. 95) on appeal be **DENIED**. Accord *Smith v. Brunsman*, 626 F. Supp. 2d 786, 788 (S.D. Ohio 2009).

November 21, 2012

s/ **Michael J. Newman**  
United States Magistrate Judge

### **NOTICE REGARDING OBJECTIONS**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within **FOURTEEN** days after being served with this Report and Recommendation. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to **SEVENTEEN** days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(B)(C), or (D) and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within **FOURTEEN** days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).